



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Engineered Modular Structures Inc.--Request
for Reconsideration
File: B-236804.2
Date: October 26, 1989

DIGEST

On reconsideration, General Accounting Office affirms its prior decision that bidder's insertion of a 60-day bid acceptance period in a bid which required a minimum bid acceptance period of 120 days rendered the bid nonresponsive notwithstanding the fact that after bid opening the contracting agency erroneously requested the protester to extend its bid acceptance period and requested a pre-award survey.

DECISION

Engineered Modular Structures Inc. (EMS) requests reconsideration of our decision in Engineered Modular Structures Inc., B-236804, Sept. 20, 1989, 89-2 CPD ¶ ___, in which we dismissed the firm's protest concerning the rejection of its bid under U.S. Army Troop Support Command (TROSCOM) invitation for bids (IFB) No. DAAK01-89-B-0072.

We affirm our decision.

The solicitation required a minimum bid acceptance period of 120 days and contained an express warning that bids allowing less than the minimum acceptance period would be rejected. The IFB set June 1, 1989, as the date for bid opening. At bid opening it was discovered that EMS inserted a bid acceptance period of only 60 days in the Minimum Bid Acceptance Period clause contained in the IFB. EMS contacted the agency on June 16, advising that it had made a typographical error in its bid and that it had meant to allow a 160-day acceptance period. EMS claims that it was advised by TROSCOM that a correction of the bid acceptance period, after bid opening, was permissible. The agency then accepted the protester's correction of its bid; asked it to extend its bid; and conducted a pre-award survey of the protester before rejecting the bid as nonresponsive because EMS had offered a bid acceptance period of only 60 days.

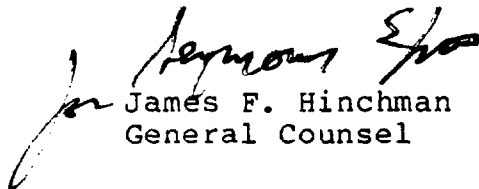
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We dismissed the protest pursuant to our Bid Protest Regulations (4 C.F.R. § 21.3(m) (1989)), stating that while it was unfortunate that TROSCOM did not sooner recognize that EMS's bid was nonresponsive, the rejection of it was, nevertheless, proper.

In its request for reconsideration, EMS argues that we did not give consideration to the fact that on July 25, TROSCOM had requested EMS to extend its bid acceptance date to September 28, and that EMS granted the extension in a timely fashion. EMS contends that its extension of its bid acceptance period after bid opening at TROSCOM's request made its bid responsive. We do not agree.

EMS's bid should have been rejected as nonresponsive after the bid opening on June 1, due to the inadequate bid acceptance period, and not further considered for award. The fact that the agency later erroneously took steps toward an award, such as ordering a pre-award survey and requesting EMS to extend its bid acceptance period, does not change the fact that EMS's bid at bid opening was nonresponsive. Bid responsiveness--i.e., whether the promise represented by the bid conforms to all material solicitation requirements--is determined at bid opening, and a nonresponsive bid cannot be rendered responsive retroactively by subsequent events. Taylor Lumber & Treating, Inc., B-229715, Dec. 23, 1987, 87-2 CPD ¶ 625.

Since EMS has failed to specify any error of law or fact in our prior decision, it is affirmed. 4 C.F.R. § 21.12(a).


James F. Hinchman
General Counsel